

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF WEST VIRGINIA

* * * * *

SCOTT T. BALLOCK,

*

Plaintiff

*

Case No.

vs.

*

1:17-CV-52

ELLEN RUTH COSTLOW

*

STATE TROOPER MICHAEL KIEF,

*

STATE TROOPER RONNIE M. GASKINS,

*

STATE TROOPER CHRIS BERRY,

*

Defendants

*

* * * * *

DEPOSITION OF
TROOPER CHRIS BERRY
May 29, 2019

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DEPOSITION

OF

TROOPER CHRIS BERRY, taken on behalf of the Plaintiff herein, pursuant to the Rules of Civil Procedure, taken before me, the undersigned, Guy Starrett, a Court Reporter and Notary Public in and for the State of West Virginia, at Steptoe & Johnson, PLLC, 1085 Van Voorhis Road, Suite 400, Morgantown, West Virginia, on Wednesday, May 29, 2019, beginning at 4:19 p.m.

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I N D E X

WITNESS: CHRIS BERRY

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ATTORNEY

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NONE MADE

S T I P U L A T I O N

(It is hereby stipulated and agreed by and between counsel
for the respective parties that reading, signing, sealing,
certification and filing are not waived.)

P R O C E E D I N G S

TROOPER CHRIS BERRY,
CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
FOLLOWS:

EXAMINATION

BY ATTORNEY CROOKS:

Q. Good afternoon.

A. Good afternoon.

Q. Your name is Christopher Berry?

A. Yes, sir.

Q. Okay, thank you.

Middle name?

A. John.

Q. Christopher John Berry.

1 All right. What's your date of birth, please?

2 A. 1984.

3 Q. And where were you born?

4 A. Morgantown, West Virginia.

5 Q. Graduate Morgantown High or ---?

6 A. Morgantown High.

7 Q. What year was that?

8 A. 2003.

9 Q. After you graduated high school, did you go
10 straight into college?

11 A. Yes, sir.

12 Q. Where?

13 A. First year was at WU, in Journalism. Then
14 second year I transferred down to Fairmont State for
15 Criminal Justice.

16 Q. Did you graduate from that program?

17 A. No, I'm actually 40 credits away to going to
18 State Police -.

19 Q. Okay.

20 So help me, then, what year was it that you
21 joined the State Police?

22 A. 2008.

23 Q. You were already a student at Fairmont and you
24 were studying Criminal Justice. So is it fair to suggest

1 that State Police work with the sort of thing you wanted
2 to do anyways, so you may as well sign up now?

3 A. Yeah. State Police was my main direction.

4 Q. Okay.

5 Did you go to the academy?

6 A. Yes, sir.

7 Q. This same year?

8 A. Yes, sir.

9 Q. Okay.

10 What months were you there?

11 A. It was August 2008 to February 2009.

12 Q. So after you graduated the academy in February
13 2009, where did you post first?

14 A. Martinsburg.

15 Q. How long were you there?

16 A. Until 2012.

17 Q. Your second post?

18 A. Fairmont. Which was only for approximately two
19 months.

20 Q. Third?

21 A. Morgantown.

22 Q. Have you been in Morgantown ever since?

23 A. Just recently went back down Fairmont, back in
24 April.

1 Q. So you came to Morgantown in 2013?

2 A. '12.

3 Q. '12.

4 A. Yes, sir.

5 Q. Do you know Ellen Ruth Costlow?

6 A. Yes.

7 Q. When did you first make the acquaintance of
8 Ellen Ruth Costlow?

9 A. I do not remember the exact date, but it was
10 around 2013 summertime. Maybe early spring.

11 I can't remember the exact date.

12 Q. At that time, she went by the name Ellen Ruth
13 Ballock?

14 A. Yes.

15 Q. Okay.

16 Tell me what you remember about your first
17 meeting with Ellen Ruth Ballock.

18 A. That day, whatever that date was, I was driving
19 through certain subdivisions, because we had a string of
20 vehicle break-ins. I remember it was a white vehicle,
21 possibly a Nissan, was the suspect vehicle. But we had a
22 rash string of break-ins going on.

23 And it all led back to this vehicle. And any
24 time I'm in neighborhoods or anything and I see people

1 out in their driveways or yards, I stop to talk to them.
2 Ellen was one of them.

3 Q. The address of the Ballock residence was 51
4 Summit Overlook Drive.

5 A. Okay.

6 Q. Which I understand is part of the Thistledown
7 Development.

8 A. Yes, sir.

9 Q. Okay.
10 So we're talking about the neighborhood that
11 overlooks the Interstate 79 near the Goshen Road exit.

12 A. Yes, sir.

13 Q. Okay.

14 So your first opportunity to meet Ellen Ballock
15 was late spring, early summer of 2013. You were cruising
16 the neighborhood and looking for a suspect vehicle.

17 You saw Ellen outside, stopped and spoke to
18 her?

19 A. Yes, sir.

20 Q. Okay.

21 Tell me, what did you discuss?

22 A. Just pretty much advised her of the situation
23 while I was there. And if she ever saw any suspected
24 vehicles driving through the neighborhood. I advised her

1 of the suspect vehicle, but we didn't have a plate number
2 for it.

3 And that if she would happen to see this
4 vehicle or suspect vehicle that matches the description I
5 gave her, to --- if she could get a plate, please let us
6 know.

7 Q. Sure.

8 Did she have any information for you?

9 A. No. She said she'd keep an eye out of it,
10 though, like anybody else would. I advised her to tell
11 her neighbors just heads up, everything.

12 Q. Okay.

13 Can you tell me what the next occasion was
14 whenever you next saw or communicated with Ellen Ballock?

15 A. Next time I saw her was referencing a --- well,
16 it was over a laptop that had to deal with her ex-
17 boyfriend.

18 Q. Stolen laptop, and the suspect was her ex-
19 boyfriend?

20 A. She referred to him as an ex-boyfriend.

21 Q. Are we talking about Kenny Ice?

22 A. Yes, sir, Kenny Ice.

23 Q. That'd be easier.

24 A. Yeah. But it wasn't actually --- she didn't

1 report it stolen. She actually reported it as like it
2 was destroyed by him. Now, maybe he stole and destroyed
3 it.

4 That's where she's getting the stolen part, but
5 it was more for it being destroyed.

6 Q. Okay.

7 Did you prepare and file any documentation with
8 the State Police to give evidence or memorialize your
9 contact with Ellen Ballock about this laptop issue?

10 A. No.

11 Q. Okay.

12 Why is that?

13 A. Come to find out the property was destroyed and
14 all this --- well, whatever is stolen and destroyed or
15 both, it all occurred in Marion County.

16 Q. You're a State Police officer. So you got
17 jurisdiction in Marion County, too.

18 Right?

19 A. Yes, sir. We have the whole state, but where
20 we're stationed Morgantown, we just only deal with
21 Monongalia County crimes.

22 Q. Okay.

23 A. I advised her if she wanted to make a report
24 she had to go down to the Fairmont and file a report with

1 the Fairmont State Police.

2 Q. Okay.

3 My next question --- I'll go ahead and ask my
4 next question was going to be, could you have notified
5 the Fairmont detachment that this was a matter that was
6 going to be coming their way?

7 A. No, I wouldn't have. I just told if she wanted
8 to file it, she needed to run down there and file it with
9 the,

10 Q. Okay.

11 A. Because we all have different shifts. I could
12 tell a Trooper who's working that night, but that doesn't
13 mean she's going to be down there that night.

14 Q. Okay.

15 So it's kind of a logistical issue that
16 motivated you to handle it the way you did? You just
17 told her, look you know the smart thing for you to do
18 would be go down to the detachment in Fairmont?

19 A. Yes, sir.

20 Q. Okay.

21 Now, when you contacted her --- strike that.

22 When you spoke with Ellen Ballock about this
23 laptop issue, ---

24 A. Yes, sir.

1 Q. --- can you tell me, was this at the end of a
2 shift, at the beginning of a shift?

3 What shift were you working?

4 A. It was an evening shift and I was working that
5 night.

6 Q. Okay.

7 A. So --- but our shifts are sporadic. We're
8 either dayshift or evening. It's throughout the week
9 wherever we are and less restricted midnight shifts.

10 Q. Just making a note. And I was trying to listen
11 to you at the same time.

12 A. If you're midnight shift, you're straight
13 midnight shift. But if you're not on midnight shift,
14 let's say your first three days of working you're evening
15 your last few days are dayshift.

16 That kind of gives you --- what the Sergeants
17 do for that is to give you a longer weekend. In contrast
18 that's so you're coming in late on your Monday, but
19 leaving early on your Sunday.

20 Q. Okay.

21 I think I follow that. Very civilized.

22 A. Yes, sir.

23 Q. Yeah, you have good Sergeants.

24 Are you married?

1 A. Yes, sir.

2 Q. How long?

3 A. Ten years.

4 Q. Kids?

5 A. Nope.

6 Q. So did you provide your cellphone number to
7 Ellen Ruth Ballock?

8 A. Yes, sir.

9 Q. You did?

10 A. Uh-huh (yes).

11 Q. Okay.

12 Why'd you do that?

13 A. I've always handed my cellphone number out to
14 people. It's one thing we'd done back in Charlestown as
15 State Police, when I was over in the Martinsburg,
16 Charlestown area.

17 Q. The cellphone number that you gave to Ellen
18 Ruth Ballock, was that a State Police phone or was that
19 your personal phone?

20 A. Personal phone.

21 Q. Okay.

22 Just to be clear about this. You guys don't
23 have West Virginia State Police issued telephones?

24 A. They can't afford that, no.

1 Q. Okay.

2 So when did you give her your cellphone? Was
3 it the first time you saw her when you were looking for
4 that suspect vehicle or ---?

5 A. Yes, sir.

6 Q. Okay.

7 Was there ever an arrest made in that break-in
8 case?

9 A. Yeah. Actually there was. We did find them.
10 We charged then with over --- I know it was over 150
11 counts of vehicle arson.

12 Q. The white Nissan, was that accurate?

13 A. Yes, sir.

14 Q. Okay.

15 A. Actually, he got rid of the Nissan and then
16 went to a Silver Honda or something. I can't remember
17 what it was.

18 I know that it was a silver car that he
19 transitioned to, when he dealt with a couple new buddies
20 that were stealing for drugs.

21 Q. The break-ins that happened, what kind of
22 timespan did that cover?

23 A. Months. I mean, I can't give exact dates, but
24 it was --- what they always did was stiff developments.

1 They would park somewhere in the development and just
2 walk from house to house, driveway to driveway checking
3 car doors.

4 Q. Was the Ballock residence included among the
5 victims of the break-ins?

6 A. If it was, I didn't investigate it. But like I
7 said, I was just going there --- going through
8 neighborhood to neighborhood.

9 Q. Okay.

10 Tom Ballock, do you know what name?

11 A. Didn't know it until all this came out.

12 Q. Okay.

13 All this came out meaning?

14 A. The lawsuit and all.

15 Q. Okay.

16 Okay. So you're talking about this litigation
17 that brings us together?

18 A. Yes, sir.

19 Q. Okay.

20 I don't think you were here yesterday when
21 Lieutenant Kief sat for a deposition?

22 A. No, sir.

23 Q. You were here today for --- Sergeant party.
24 You were here today for Sergeant Gaskins' deposition,

1 though?

2 A. Yes, sir.

3 Q. Okay.

4 So you heard me question him about a telephone
5 call that Tom Ballock placed to the barracks. And he
6 spoke with, then Sergeant Kief, now Lieutenant Kief?

7 A. Yes, sir.

8 Q. Okay.

9 That's what I want to talk with you about.

10 A. Okay.

11 Q. Tom Ballock seemed convinced that there was an
12 affair going on between Ellen Ballock, now Ellen Costlow,
13 and you.

14 A. Yes, sir.

15 Q. Well, first of all, let me just put the
16 question to you directly.

17 Have you ever had a sexual relationship with
18 Ellen Ballock?

19 A. No, sir.

20 Q. Okay.

21 Ellen Ballock would be Ellen Costlow now.

22 A. Yes, sir.

23 Q. All right.

24 So we know who we're talking about. And so

1 your answer to that in unequivocally, no.

2 A. Yes, sir.

3 Q. All right.

4 Now, I have not interviewed Tom Ballock about
5 his suspicion, but I know that there was a point in time
6 when the Monongalia County Sheriffs' Department went to
7 that Ballock residence, there in the Thistledown ---

8 A. Yes.

9 Q. --- Thistledown neighborhood.

10 And the reason they were called there was
11 because of a domestic dispute that was going on between
12 Ellen Ballock and Kenny Ice.

13 A. Yes, sir.

14 Q. Okay.

15 Matter of fact we marked as an exhibit a
16 document that helps memorialize that whole thing. Let's
17 just take a look at it.

18 You've got the official stack of exhibits
19 there. I'm looking at Exhibit 2.

20 A. Got it.

21 Q. Okay.

22 Have you ever seen this before?

23 A. A Sheriffs' Department report, I've seen them
24 before. But no, I have not seen this specific one.

1 Q. Yeah, okay.

2 That was my --- actually my question was, have
3 you ever seen this one before? I thought maybe you
4 might've reviewed it in anticipation of giving your
5 deposition.

6 A. No, sir.

7 Q. Okay.

8 Let me just give you kind of a chance to look
9 through that. Because I don't know if it's going to be
10 very productive and fair to sit here and ask you
11 questions about something you haven't heard of.

12 ---

13 (WHEREUPON, WITNESS REVIEWS DOCUMENT.)

14 ---

15 THE WITNESS: Okay.

16 BY ATTORNEY CROOKS:

17 Q. You've only had the chance to read this since I
18 showed it to you a couple minutes ago. So in fairness to
19 you, I'll direct you a little bit here to the part of the
20 document that is of interest to me. I think the first
21 place I want to go is the second full paragraph of Deputy
22 Snyder's narrative.

23 More specifically, I'm looking at the top of
24 page two. See reference there to Mrs. Ballock stated she

1 was texting Trooper Berry.

2 A. Yes, sir.

3 Q. About meeting him earlier in the day, to speak
4 with him about the computer.

5 A. Yes, sir.

6 Q. Okay.

7 So personally, Trooper Berry, that's you?

8 A. Yes, sir.

9 Q. There's no other Trooper Berrys, are there?

10 A. No.

11 Q. Okay.

12 And reference to the computer would be the
13 computer issue that you had talked with her about, where
14 you discovered that the event, if it happened, happened
15 in Marion County.

16 So you referred her there?

17 A. Yes.

18 Q. Okay.

19 So first thing I want to do it utilize this
20 document to suggest that your encounter with Ms. Ballock
21 was earlier the same day of this report, August 12, 2013.

22 And the reason I make that suggestion is
23 because Deputy Snyder writes here that he was told by
24 Mrs. Ballock that she was texting you about meeting with

1 her earlier in the day.

2 A. Uh-huh (yes).

3 Q. So I interpret that to mean the same day,
4 August 12th.

5 Are you okay with what this is suggesting?
6 Does this sound like it's plausible, that August 12 was
7 the day you encountered her about the laptop issue?

8 A. That probably would be right, yes.

9 Q. Okay.

10 I mean, let me put it to you this way. You're
11 a busy guy. You do a lot of stuff, I know.

12 So maybe the better way to do it is to say, do
13 you have any reason to doubt that it was August 12, 2013
14 when you dealt with Ellen Ballock about this computer
15 issue?

16 A. Yeah, because it was only one time only when I
17 dealt with her about the laptop, so this would have to be
18 the day.

19 Q. Sure. Right.

20 And Deputy Snyder, I mean, do you know him?

21 A. Yes, sir.

22 Q. I mean, he's careful. He's reliable so he's
23 going to write this down carefully and probably get it
24 right.

1 A. Uh-huh (yes).

2 Q. Okay.

3 Okay. So it would appear, then, that she,
4 Ellen, texted you, wanting to meet with you about the ---
5 apparently about the computer.

6 This narrative suggests that Kenny Ice came
7 home unexpectedly, got a look at the text messaging and
8 it set him off. And he accused her of having an affair
9 with you.

10 A. That's what it states.

11 Q. Yeah.

12 I don't suppose all these years later you would
13 have any way to retrieve whatever messaging passed
14 between you and Ellen Ballock on August 12, 2013, would
15 you?

16 A. No, sir. I'd be lucky to retrieve text
17 messages from old phones. That was two years ago.

18 Q. You've changed phones ever since?

19 A. Oh, yeah. These Apple phones it's every two
20 years they go bad.

21 Q. Right.

22 But when you change phones, not that I'm any
23 expert on this subject. But I'll tell you what I think I
24 know. I know when I do it, what they do is they pull the

1 SIM card out of the old one and they put it in the new
2 one. Which to my way of thinking tells me that there is
3 some data that carries forward to the new phone, ---

4 A. Uh-huh (yes).

5 Q. --- because of that SIM card.

6 A. Not text messages, though.

7 Q. Well, that was going to be my question to you.

8 Do you know enough about this to tell me if you
9 think that would also carry forward text messaging?

10 A. The only reason why I could tell you it's
11 definitely not text messages is because every time I've
12 always got a new phone, I've lost all my text messages.

13 I even lost pictures. I've lost --- on this
14 brand new phone, this iPhone X, I lost half my contacts.
15 And I had to regain them. But text messages, yeah, you
16 always lose text messages.

17 So it's one of those things where you got to
18 bite the bullet and --- because there's not only --- I'm
19 not talking about Ellen Ballock, but, you know, text
20 messages with other people and stuff that might have
21 dates or certain things on there that I always keep as a
22 planner or guide that, you know, I could always go back
23 and scroll through. And double-check myself, but ---.

24 Q. I do that, too.

1 Yeah, sure.

2 So it sounds like the evidence of your text
3 exchange with Ellen Ballock, from August 12, 2013, at
4 least so far as your side of that communication, is lost
5 to history.

6 A. Yes, sir.

7 Q. Okay. All right.

8 So this instant of domestic discord that
9 resulted in the Deputy Sheriff having to go to the
10 Ballock residence, you didn't know anything about that
11 until I showed you this document?

12 A. I don't know if he contacted about everything
13 that was going on.

14 Q. Okay.

15 A. But he might've brought this up or something.
16 I can't remember, but I remember hearing something about
17 this. But at the same time it really wasn't my business
18 or, you know, ---

19 Q. Right.

20 A. One of those things where, you know, it's
21 typical any time domestics you'll --- we can go to the
22 house a hundred times in a month for domestics.

23 Q. Uh-huh (yes).

24 A. It's one of those things I didn't care about,

1 so ---.

2 Q. Okay.

3 You have a memory of being contacted by the
4 then Sergeant Kief?

5 A. Uh-huh (yes). Yes, sir.

6 Q. And during that contact, he --- what did he
7 have to say about all this? Just tell me what you
8 remember about that discussion.

9 A. I remember vaguely. But that was when I found
10 out about this whole affair thing.

11 Q. Okay.

12 A. And I just laughed about it, because I was
13 like, you kidding me? And when I saw him the next time,
14 he actually saw Ellen, too, but he looked, because he's
15 like, about the text messages.

16 And I showed him my phone and he --- I showed
17 him the text messages. I said, where on there does it
18 say we're having an affair?

19 And it showed all the stuff, so ---. That had
20 nothing to do with anything of an affair.

21 Q. So your discussion with Sergeant Kief was
22 person to person?

23 A. First it was a phone call. But next time when
24 I came into the detachment, we spoke more about it. The

1 phone call was just more when --- what's going on?

2 What's this all about?

3 And you know, he told me he said, well, there's
4 mention you have an affair. And I just --- I laughed
5 about it, because I couldn't figure out where that came
6 from.

7 But now after seeing this report, I can see ---
8 and after hearing all the testimonies I can see why now.

9 Q. Do you know Kenny Ice?

10 A. Never met him.

11 Q. Okay.

12 So you talked with Sergeant Kief on the phone.
13 You followed up with an in-person discussion, during
14 which you showed him your phone.

15 Does that cover everything that ever passed
16 between you and Sergeant Kief concerning Ellen Ballock?

17 A. Yes, sir. It was all done --- it was like a
18 couple days after it, because I was on days off when he
19 contacted me.

20 Q. Uh-huh (yes). Okay.

21 So have you, to your knowledge, had any
22 communication with Ellen Ballock, now Ellen Costlow, of
23 any kind?

24 A. After this case?

1 Q. Well, let me be a little precise about this,
2 okay?

3 A. Okay.

4 Q. We know --- we've established here, using this
5 Exhibit Number 2, that it was August 12, 2013 that you
6 interacted with her about the laptop issue.

7 A. Yes, sir.

8 Q. Okay.

9 And we know that a few days after you
10 interacted with Sergeant Kief. And he asked you about
11 whether you were having an affair.

12 And you denied it.

13 A. Yes, sir.

14 Q. Okay.

15 So then my question becomes, you know, have you
16 had any more interaction with Ellen Costlow until this
17 lawsuit got filed?

18 A. No.

19 Q. Okay.

20 Since this lawsuit got filed, have you had any
21 communication with her?

22 A. No.

23 Q. Okay.

24 You sat through the deposition of Sergeant

1 Gaskins earlier today. And you probably know a lot more
2 now about the investigation you did than you did before
3 today?

4 A. Yes, sir.

5 Q. All right.

6 Can you tell me if you were ever consulted for
7 information or in any other fashion by then Corporal
8 Gaskins, in the course of his investigation?

9 A. No, sir.

10 Q. Okay.

11 Do you happen to know Scott Ballock, by any
12 chance?

13 A. No, sir. First time I actually ever saw or met
14 him was his deposition.

15 Q. Okay.

16 You know, just from the other depositions in
17 this case, that the West Virginia State Police and the
18 FBI, they collaborate on cases?

19 A. Yes, sir.

20 Q. Okay.

21 So comes my question, maybe you knew him from a
22 professional context or something?

23 A. No, I have never met him. I've actually never
24 even ---.

1 Like I said, the first --- I actually thought
2 it was Tom Ballock at first, was him. I didn't know it
3 was the father until later.

4	Q. Uh-huh (yes).
---	------------------

5 And Tom is the father. Scott is my client.

6 A. Yeah. Because that's when I found out the
7 whole website ---.

8	Q. Okay.
---	----------

9 It was Kenny Ice who suggested that Ellen and
10 you had a relationship.

11 Can you identify anything for me other than
12 this episode on August 12, 2013, that Kenny Ice might be
13 relying on to make that suggestion?

14 A. I have no idea. Because I had never met him.

15 Q. Just bear with me for a minute.

16 In fact, if you wanted to take a short break, I
17 got a couple things I want to look at here. But I'm
18 really very nearly done.

19	A. Okay.
----	----------

20 | -----

21 (WHEREUPON, A PAUSE IN THE RECORD WAS HELD.)

22 | ———

23 | BY ATTORNEY CROOKS:

24 Q. I wanted to clear up at least a confusion that

1 I have on the timeline that respects your interaction
2 with Ellen Ballock about the break-ins versus your
3 interaction with her about the laptop.

4 A. Okay.

5 Q. It's my impression that the first interaction
6 was about the break-ins.

7 A. Yes.

8 Q. And that just was happenstance as far as you
9 were cruising the neighborhood and she happened to be
10 outside.

11 A. Yes.

12 Q. Okay.

13 And you kind of --- do we have any way to know
14 when that happened?

15 A. The ---?

16 Q. Interaction about the break-ins.

17 A. Like I said, I can't ---

18 Q. There may not be any way to pin it down.

19 A. Yeah, I remember --- like I said, I can't
20 guarantee --- tell you it was warm. So that's why I want
21 to say spring, summer, you know, between then.

22 Exact date and time, I don't know.

23 Q. But you're sure you gave her one of your cards.
24 And that's how she knew to text you about the laptop?

1 A. Well, yeah. I mean, she had my cellphone
2 number that day.

3 Q. Okay.

4 Because according to the Mon County Sheriffs'
5 Department, you know, this fracas on August 12, 2013
6 between Ellen and Kenny Ice had to do with him coming
7 home unexpectedly and discovering that she was texting
8 you?

9 A. Yes, sir.

10 Q. Okay.

11 Let's see. Let me look at something here. You
12 still have that exhibit that the Sheriffs' Department
13 prepared.

14 Right?

15 A. Yes, sir.

16 Q. What's the number on it?

17 A. Exhibit 2.

18 Q. Okay. There's my copy.

19 ATTORNEY CROOKS: Just give me a minute.

20 ---

21 (WHEREUPON, A PAUSE IN THE RECORD WAS HELD.)

22 ---

23 BY ATTORNEY CROOKS:

24 Q. Have you made any effort, per chance, to try

1 and retrieve the text traffic between you and Ellen
2 Ballock? Maybe even at the direction of your counsel, by
3 getting in touch with the telephone provider for us?

4 A. The only thing it would've showed, then, phone
5 numbers probably. But during this time when this all
6 came out and they asked me, that was years ago. So I
7 mean, we wouldn't be able to see messages.

8 Q. Okay.

9 A. But that's even a long shot, if we'd even get
10 the full draft of text messages sent back between her and
11 I. And that's going through a list of lots of people I
12 text, ---

13 Q. Right.

14 A. --- because it's just about date and times.

15 Q. Okay.

16 I follow everything you just said, but pardon
17 me to insist on the point of the question, which is, did
18 you try to do it?

19 A. No, I did not. I asked them and we just --- we
20 just didn't.

21 Q. Okay.

22 Have you ever conducted any surveillance of
23 Scott Ballock?

24 A. No.

1 Q. Have you ever conducted any surveillance of Tom
2 Ballock?

3 A. No.

4 ATTORNEY CROOKS: I think those are all
5 the questions I need to ask you today.

6 THE WITNESS: Okay, sir.

7 ATTORNEY CROOKS: Thank you.

8 THE WITNESS: Thank you.

9 ATTORNEY CROOKS: Pass the witness.

10 ATTORNEY PHILLIPS: Nothing, no questions.

11 ATTORNEY JEFFRIES: Just a couple.

12 ---

13 EXAMINATION

14 ---

15 BY ATTORNEY JEFFRIES:

16 Q. I'd like to refer back to Exhibit 2, the Mon
17 County Call Center Report.

18 In response to the questions from Mr. Crooks,
19 you agreed that you would likely exchange text messages
20 with Ms. Costlow on August 12, 2013, because she refers
21 him --- or Deputy Sheriff refers to in his narrative that
22 she said that she texted you that day.

23 Do you recall texting her on August 12, 2013,
24 specifically that day?

1 A. Once again, like I said, I wouldn't know if I
2 did or not. I can't --- just because it says in the
3 report and gives me a date, I can't prove that's still
4 the exact same date.

5 Q. And can you go to page three of the report?
6 Actually if you'll just kind of refer back into
7 page two. It starts and then it changes narrative and
8 then carries over to page three.

9 A. Yes, sir.

10 Q. Third full paragraph down, she, meaning Ms.
11 Costlow, said West Virginia State Police Trooper Berry
12 had been at her home that day or the day before,
13 referenced a missing laptop that she states has been
14 stolen.

15 Had you been at her home?

16 A. I had been at her home. But like I said, you
17 know what I mean right there, she's saying that day or
18 the day before. So that's --- that I can't prove, if it
19 was the 12th or 11th or if it was even a couple days
20 before. So ---.

21 Q. So earlier talking about the initial meeting
22 with her about the car break-in, you said that you knew
23 it was hot.

24 So you're saying spring or summer. When you

1 discuss the laptop with Ms. Ballock, was it hot? Was it
2 fall, summer?

3 A. It was still summertime.

4 Q. So it could've been August.

5 A. Could've been.

6 Q. But it also could've been July. It could've
7 been August 1st?

8 A. Yes, sir.

9 Q. You don't have any reason to doubt that it was
10 August 12th. But she said that you also don't have any
11 reason to necessarily believe that's true.

12 Would that be correct?

13 A. Correct.

14 Q. Now, Mr. Crooks asked you about any other
15 communications with Ms. Costlow, other than --- let me
16 back up. Strike that.

17 And the other thing, you know that
18 communication about the laptop occurred in the summer,
19 when it was hot?

20 A. Yes, sir.

21 Q. And you know that it was after you had spoken
22 about the car break-ins?

23 A. Yes.

24 Q. So you can at least pin it down to that area.

1 Moving on. Mr. Crooks asked you about any
2 other communications with Ms. Costlow after this
3 August 12, 2013 domestic violence call. And you said you
4 had not had any.

5 Had you had any other communications with Ms.
6 Costlow, other than we got the car break-in investigation
7 and the laptop complaint? Have you had any other
8 communications with Ms. Costlow?

9 A. Yes, sir. There was one other time.

10 Q. What was the other time?

11 A. It was in between the break-ins and this the
12 laptop issue. It was in reference to her contacting me
13 via text message, reference over her children and threats
14 made by her husband, husband's family.

15 It was just a brief text message and I advised
16 her, like I'd advise anybody to ---. She can get a
17 protective order, if she needs to, or take it to the
18 family court judge for child custody issues.

19 Q. So this would've been summer of 2013 as well?

20 A. Yes, sir. She was just looking for advice on
21 what to do.

22 Q. Did she make any allegations to anything that
23 you construed as a criminal violation?

24 A. She mentioned about, you know, the family --- I

1 can't remember if it was the family or just the husband
2 or who knows. I can't remember who. I remember it was
3 something to do with the husband or some family making
4 threats about the kids or child --- or the custody
5 issues.

6 Q. And this was via text message, not in person?

7 A. No. Yeah, just all via text message.

8 Q. Was --- were these text messages the ones that
9 you showed Lieutenant Kief whenever you met with him?

10 A. Yes, sir.

11 ATTORNEY JEFFRIES: I have no further
12 questions.

13 ---

14 RE-EXAMINATION

15 ---

16 BY ATTORNEY CROOKS:

17 Q. Do you know if it would've been practical to
18 print off the text messages that you showed to Sergeant
19 Kief?

20 A. No.

21 Q. At the time, I mean.

22 A. Oh, I understand what you're saying. No. I
23 mean, like I said, at the same time, though, I just
24 laughed about them. Because I didn't know it was going

1 to blow up into this.

2 You know I was being accused. And like I said,
3 there was no formal complaint made on me that was to the
4 point of starting an investigation on me.

5 Q. Uh-huh (yes).

6 A. Now, if there would've been for like a PSU
7 investigation, then, yeah, they do print it off.

8 Q. Okay.

9 Yeah. I mean, have you ever had a PSU
10 investigation on your behavior?

11 A. Yes, sir. Well, it was over --- this was back
12 in Martinsburg. And then I had one here in Morgantown,
13 so ---.

14 But not in reference to this case.

15 Q. Not in reference to the Ballocks?

16 A. No.

17 Q. Okay.

18 The other investigations, what generally did
19 that have to do with?

20 A. The other --- well, the one in Martinsburg had
21 to deal with a crime scene issue that was over family.
22 And wasn't even I was in trouble over it, I was just one
23 of the officers that was there.

24 Q. You're a witness?

1 A. Yeah, a witness into it. So that's why I had
2 to be investigated about it, just to cover all the
3 Troopers' tracks that were on that scene.

4 Q. So your conduct was not in question the first
5 time?

6 A. No, uh-uh (no).

7 Q. Okay.

8 What about the --- down here?

9 A. The second one was, I was --- well, there was a
10 little head butting going on between me and a Sergeant.
11 And I was going to leave the State Police to another job.

12 And they said I applied for it, which I didn't,
13 but it was put in the paper that I was applying for a job
14 at West --- at the Westover Police Department. Which
15 technically State Police policy is you're not supposed to
16 have a second job that's in law enforcement.

17 But I asked if I can, you know, join that
18 police department. And they said yes. And they went to
19 the City Council and the Council approved hiring me, but
20 I never put an application in.

21 Q. Oh, okay. I think I follow that.

22 A. Uh-huh (yes).

23 Q. Okay.

24 A. It's actually a felony offense in the State

1 Police.

2 Q. No kidding.

3 A. Uh-huh (yes).

4 Q. So what was the resolution of the whole thing?

5 A. It got washed out.

6 Q. So you weren't disciplined over it?

7 A. I was disciplined by Captain Merrell for one
8 day. But it was like a 24-hour ---.

9 Q. Well, I mean, you're still with the State
10 Police.

11 A. Oh, yeah. Yes, sir.

12 Q. Okay.

13 So this other instance that Mark asked you
14 about. he did a pretty thorough job there. Your best
15 recollection is that the only evidence that there ever
16 would've been on that would've been your text messages,
17 which are now too old to retrieve?

18 A. Yes, sir.

19 Q. Okay.

20 That was strictly a text exchange? You didn't
21 go by the residence?

22 A. No, sir.

23 Q. Likewise, she didn't come by the barracks to
24 meet you?

1 A. No, sir.

2 Q. Actually it's not barracks, is it?

3 It's detachment.

4 A. You can call it ---.

5 Q. I've heard more barracks being used.

6 A. People call them barracks, too.

7 Q. Technically, barracks that's where soldiers
8 sleep.

9 Right?

10 A. We still go by military ---.

11 Q. Okay.

12 And you guys don't sleep at the detachment, do
13 you?

14 A. Oh, no, there is some guys who travel and will
15 stay. We do have sleeping ---.

16 Q. Do people cot in the back?

17 A. Yeah. Yeah, we actually have sleeping cores in
18 every detachment.

19 Q. Okay. All right.

20 I was kind of jesting there, but I suppose it
21 makes sense. You have the facility to do that.

22 ATTORNEY CROOKS: All right.

23 I think those are all the questions I need to
24 ask for now.

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THE WITNESS: Okay. Thank you.

ATTORNEY JEFFRIES: We'll read.

* * * * *

DEPOSITION CONCLUDED AT 5:15 P.M.

* * * * *

1 STATE OF WEST VIRGINIA)

3 CERTIFICATE

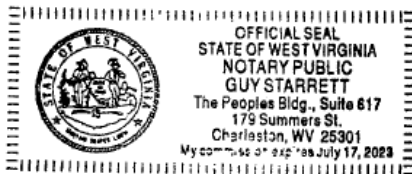
4 I, Guy Starrett, a Notary Public in and for the
5 State of West Virginia, do hereby certify:

6 That the witness whose testimony appears in the
7 foregoing deposition, was duly sworn by me on said date,
8 and that the transcribed deposition of said witness is a
9 true record of the testimony given by said witness;

10 That the proceeding is herein recorded fully and
11 accurately;

12 That I am neither attorney nor counsel for, nor
13 related to any of the parties to the action in which these
14 depositions were taken, and further that I am not a
15 relative of any attorney or counsel employed by the
16 parties hereto, or financially interested in this action.

17
18 I certify that the attached transcript meets the
19 requirements set forth within article twenty-seven,
20 chapter forty-seven of the West Virginia Code.





Court Reporter